

REMARKS

Claims 1-11 are pending in the above-identified application. These claims have been subjected to a Restriction Requirement under 35 USC 121 as follows:

Group I -- claims 1-5 directed to a fungicidal mixture;

Group II -- claims 6-9 directed to a method for controlling harmful fungi which comprises applying the fungicidal mixture of the claims of Group I;

Group III -- claim 10 directed to seed containing the fungicidal mixture of the claims of Group I; and

Group IV -- claim 11 directed to a method for preparing the fungicidal mixture of the claims of Group I.

Present Invention is Subjected to Unity of Invention Rules

It is noted that the Office Action of May 8, 2007 incorrectly attempts to apply the requirements of 35 USC 121 to the present application, even though the present application is a national stage entry application subject to the rules of the Patent Cooperation Treaty, including the Unity of Invention rules as noted at 37 CFR 1.475. Thus, the claims of the present application should have been reviewed taking into account the applicable Unity of Invention rules.

Election and Traversal

Applicant hereby elects the subject matter of Group I, i.e. claims 1-5. This election is made with a traversal based on the following reasons.

Unity of Invention Requirements Allow for Examination of All Claims

Under applicable Unity of Invention requirements, all of the claims of the present application should be examined. As noted in the “Administrative Instructions under PCT” and Annex B (MPEP Rev. 5, August 2006, pp AI-57 to AI-58), the combination of claims from different categories is permitted. Specifically, under Annex B, Unity of Invention rule (e)(i), “...in addition to an independent claim for a given product, ...an independent claim for a use of the said product [is permitted]...”. Consequently, at least the subject matter of Group II, i.e. claims 6-9, should be examined together with that of the elected subject matter of Group I. Secondly, it is submitted that the subject matter of Group III (claim 10) and Group IV (claim 11) both clearly include and rely upon the same “special technical feature” recited in the claims in the elected subject matter of Group I. Specifically, claims 10 and 11 both require the fungicidal mixture of compounds I and II which is recited in the claims of Group I and which patentably defines over the prior art.

Third, it is submitted that there is no significant undue burden placed on the Examiner to examine all of the subject matter of all of pending claims 1-11 together.

In view of the above, it is respectfully requested that the Examiner withdraw the outstanding Restriction Requirement and apply the standards of the Unity of Invention requirement, such that all of the subject matter of all of the presently pending claims would be examined.


If any questions arise in the above matters, please contact Applicant's representative, Andrew D. Meikle (Reg. No. 32,868), in the Washington Metropolitan Area at the phone number listed below.

- ☐ Attached is a Petition for Extension of Time.
- ☐ Attached hereto is the fee transmittal listing the required fees.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

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Respectfully submitted,

By 

Andrew D. Meikle
Registration No.: 32,868
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road
Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant